STATE OF VERMONT
GREEN MOUNTAIN CARE BOARD

In re: MVP Health Insurance Company 2015	)	No. 2016-044
Agriservices Rate Filing	)	GMCB-12-15-rr
	)	

PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Office of the Health Care Advocate submits the following proposed findings of fact and conclusions of law for the Green Mountain Care Board's consideration in the above-captioned filing remanded to the Board by the Vermont Supreme Court.

I. <u>Findings of Fact</u>

a. Nature of the Filing

1. Agriservices is an association for farmers. MVPHIC is a for-profit New York health insurer that provides PPO and EPO products to individuals and employers in the small and large group markets in New York and Vermont. MVPHIC is owned by MVP Health Care, Inc. (MVP), a New York corporation that transacts health insurance business in New York and Vermont through a variety of for-profit and non-profit subsidiaries.

2. The arrangement between MVPHIC and Agriservices is a minimum premium plan. Under this arrangement, Agriservices pays its own claims up to 115% of expected claim liability, and MVPHIC provides administrative services and stop loss coverage at a pooling level of $200,000.

3. Agriservices offers five health plan options to its members. This filing affects approximately 1,220 covered lives with premiums effective for one full year beginning December 1, 2015.

4. The carrier submitted its previous Agriservices filing in July of 2014, allowing the Board to conclude its 90-day review, and the carrier to provide at least 30 days' notice to affected members of an approved rate change prior to its December 1st effective date.

5. In this September 2015 filing, MVPHIC proposed an annual rate increase that averaged 26.9% and ranged from 26.5% to 27.3%. MVPHIC discovered an error in its rate development and revised its filing on November 3, 2015. The revised filing increased the requested average annual rate change to 27.4% with a range from 16.8% to 40.7%. As a result of the revision, the Board's actuaries commenced a new review of the filing. The original September 9, 2015 filing left insufficient time for the Board to complete its 90-day statutory review prior to a December 1, 2015 effective date, rendering it impossible for Agriservices to notify its members of the final rate increase 30 days or more prior to the increase taking effect. *See* 8 V.S.A. § 4062(a)(2)(A)

(Board has 90 days to review rate filing); Rule 2.000, § 2.405 (insurer must provide affected policyholders written notification of change in rates at least 30 days before effective coverage date). The error and subsequent second, revised filing in November, further delayed Board review and the carrier's notification to policyholders of a final, approved rate change.

6. On October 30, 2015, Agriservices notified its members of the proposed rate increase, that the increase was "pending approval,"[1] and that members who did not terminate their coverage would be billed their existing premiums until new rates were determined. Once rates became finalized, however, members would be billed retroactively at the new premium levels. The letter further informed members that any requests to change coverage must be received by the company no later than November 20, 2015. Agri-services Agency, *LLC Letter to Health Plan Sponsor* (10/30/15). In a subsequent correspondence on December 1, 2015, Agriservices advised members that they could terminate their coverage and enroll in Vermont Health Connect, but must do so no later than December 15, 2015 for coverage effective January 1, 2016. Agri-services Agency, *LLC Letter to Health Plan Sponsor* (12/01/15). In addition, policyholders were told they could purchase coverage for one month (December 2015) to avoid a coverage gap.

7. MVPHIC maintains that Agriservices can continue to offer non-ACA compliant health plans in Vermont because they are grandfathered.[2] *See* MVPHIC December 2014 Agriservices Association Rate Filing, Docket no. GMCB-019-14rr at 2; MVPHIC's Memorandum in Lieu of Hearing (MVP Memo) at 1, *available at* http://ratereview.vermont.gov/sites/dfr/files/GMCB_012_15rr_MVP_Memo.pdf ("no changes have been made over the past year that would cause the association to lose its grandfathered status"). MVPHIC also bases its authority to offer non-ACA compliant health plans on federal guidance relating to transitional plans.[3] MVPHIC Responses (10/19/15) ¶ 3 ("The renewal of existing coverage is permitted under federal law by the CMS bulletin issued on March 5, 2014"), *citing to* CMS Bulletin, http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/transition-to-compliant-polocies-03-06-2015.pdf.

8. Agriservices previously advised the Board that it would discontinue its policies in Vermont and that its members would purchase future coverage through Vermont Health Connect (Exchange). *See, e.g.,* Docket no. GMCB-028-13rr at Finding ¶ 3 ("Starting December 1, 2014, Agri Services members will purchase health insurance through the health benefit exchange"); Docket no. GMCB-019-14rr at Findings ¶¶ 7, 8 (Agriservices' members will migrate to the Exchange in 2015; the 2014 filing is Agriservices' last).

9. The Board premised its approval of Agriservices' previous rate filing—with a rate increase of approximately 14.9% for annual coverage beginning December 1, 2014—on MVPHIC's confirmation that the filing was its last and that members would be notified that they should

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[1] Agriservices erroneously advised members that the plans are reviewed by the Department of Financial Regulation, rather than by the Board.

[2] To qualify as a grandfathered plan, the plan must have been in effect on or before March 23, 2010, and have not been materially changed to reduce benefits or employer contributions since that time. Grandfathered plans are exempt from many changes required under the Affordable Care Act. 45 CFR 147.140

[3] Transitional or "grandmothered" plans are non-grandfathered plans that were in effect on October, 2013. Like grandfathered plans, these plans do not have to be fully compliant with the ACA. The federal guidance allows transitional plans to renew up until October 1, 2016 and remain in force as late as September 30, 2017.

enroll in an Exchange plan for 2015:

> [W]e accept MVPHIC's confirmation that this is Agriservices' final rate filing, and that members who choose not to renew their policies at this juncture are no longer eligible for Agriservices' coverage at any future date. The HCA sought this confirmation to ensure that plan members would not be limited in their access to federal subsidies as they migrate to coverage through Vermont Health Connect.
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> We approve the filing with the understanding that this is our last review of an Agriservices filing and Agriservices must notify its members that their plans will no longer be available once the coverage period has ended.
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> *Id.* at Conclusions of Law ¶¶ 4, 9.

b. Summary of the Data and Analysis

10. MVPHIC used as a base experience period incurred claims from May 1, 2014 through April 30, 2015, and paid through June 30, 2015, to develop its proposed rates.

11. MVPHIC projected the base period claims minus claims in excess of $200,000 forward to the rating period using an annual effective medical trend of 6.6% and prescription drug trend of 17.5%, and adjusted the projected claims to account for a 2.7% stop loss fee. No adjustment was made for changes in demographics (age and gender). Thereafter, the cost was increased to account for expenses of 15.9% which include general administrative expenses of 9.75% and a 1.0% contribution to surplus.

12. The 27.4% proposed rate increase results from observed claim trends that have far outpaced premium increases. Between the 2014 and the 2015 experience periods, the observed trend was 30.4% for medical and 55.8% for prescription drugs, or a total observed trend of 32.6%. For the 2015 experience period, the overall medical loss ratio (MLR) for the Agriservices book of business was 108.9%, with a 109.2% MLR for members who are still active.

13. L&E has reviewed the filing to determine whether the rates are excessive, inadequate, or unfairly discriminatory. L&E recommends that the Board make two modifications. First, L&E recommends that MVPHIC calculate the single conversion factor and demographic factor based on Agriservices' most recent enrollment distribution, which reduces the rate by approximately 0.9%. Second, L&E recommends that the carrier use Agriservices-specific experience to calculate its projected medical and prescription drug trends, which reduces the medical trend from 6.6% to 6.4% and the pharmacy trend from 17.5% to 17.1%. L&E Memo at 6. With these two modifications, the rate change decreases from 27.4% to approximately 25.9%. *Id*. at 8.

14. L&E observes that some members will experience "undoubtedly a significant increase" of 40.7% if the filing is approved. In addition, policyholders purchasing individual coverage will pay "noticeably higher" premiums than if purchasing comparable coverage on the Exchange, while families will pay "slightly lower" premiums. *Id*. at 5.

15. The proposed rate increases exceed any rate change previously approved by this Board.

16. MVPHIC "acknowledges the size of the requested rate increases." MVP Memo at 3.

17. With the recommended modifications, L&E concludes that the proposed rates are not excessive, inadequate, or unfairly discriminatory. *Id*. at 8.

18. DFR reviewed the filing's impact on the carrier's financial health and finds that "the rate as proposed will have the impact of sustaining the current level of solvency." Solvency Analysis at 1. Further, based on its small percentage of business conducted in Vermont, DFR concludes that "MVPHIC's Vermont operations pose little risk to its solvency." *Id*. at 2.

19. The HCA requests that the Board disapprove, or in the alternative, modify the rate request "to make it as affordable as possible," including adopting L&E's requested modifications and reducing the contribution to surplus to 0%. HCA Memo at 5, *available at* http://ratereview.vermont.gov/sites/dfr/files/GMCB_012_15rr_MVP_Memo.pdf. The carrier requests that the Board reject L&E's recommended modifications and approve the rates as filed. MVP Memo at 3.

c. Affordability Measures

20. According to the Consumer Price Index, the cost of all items rose only .2% in the 12 month period ending in October 2015. Consumer Price index. Economic News Release. November 17, 2015. http://www.bls.gov/news.release/archives/cpi_11172015.pdf

21. Vermont per capita personal income grew approximately 3% between 2014 and 2015. Department of Labor, Economic & Labor Market Information, Per Capita Personal Income, Vermont and the United States. November 5, 2016. http://www.vtlmi.info/pcpivt.htm

22. The increases in this filing quadruple the 10% threshold set by the Affordable Care Act triggering a review of rate increases for reasonableness.

III. Standard of Review

1. The Board reviews rate filings to ensure that rates are affordable, promote quality care and access to health care, protect insurer solvency, and are not unjust, unfair, inequitable, misleading or contrary to Vermont law. 8 V.S.A. § 4062(a)(3); GMCB Rule 2.000, *Rate Review*, §§ 2.301(b), 2.401. Further, the Board takes into consideration changes in health care delivery, changes in payment methods and amounts, and other issues at its discretion. *Id*.; 18 V.S.A. § 9375(b)(6).

2. As part of its review, the Board will consider DFR's analysis and opinion on the impact of the proposed rate on the insurer's solvency and reserves. 8 V.S.A. § 4062(a)(2)(B), (3). The Board shall also consider any comments received on a rate filing. Rule 2.000, §2.201.

3. The burden falls on the insurer proposing a rate change to justify the requested rate. *Id*. § 2.104(c).

II. Conclusions of Law

1. As a preliminary matter, both MVPHIC and Agriservices have alternatively characterized this filing as "grandfathered" and "transitional." It cannot be both; by definition, a transitional plan is a non-grandfathered plan. Nor does Vermont permit the filing of transitional plans. *See* DFR Order Regarding Vermont Health Connect Transition and Implementation (Nov. 7, 2013), *available at* http://www.dfr.vermont.gov/reg-bul-ord/order-smooth-transition-vhc (coverage under transitional plans extended no later than March 31, 2014). Accordingly, the March 2014 federal guidance cited in support of Agriservices' authority to continue to offer these plans in Vermont is inapplicable, and any reliance on it is misplaced and misleading.

2. The Board agrees with L&E's conclusion that with the changes L&E recommended, the proposed rate increase is not actuarially excessive or inadequate. The Board further agrees with DFR that the proposed increase does not threaten insurer solvency.

3. The Board finds that this proposed average rate increase of 40.7% is not affordable to plan members for several reasons: This increase is more than ten times higher than current wage trends in Vermont and more than 200 times higher than the increase in consumer goods in the past year according to the Consumer Price Index; this increase is higher than any previously approved by the Board; and it greatly exceeds the Affordable Care Act's reasonableness threshold. Even the carrier has acknowledged that the increase is "significant."

4. The Board further finds that this MVPHIC's actions in this case did not meet its responsibilities to the Board or its plan members, resulting in a filing that was misleading, unfair, unjust, and inequitable. As noted above, the 2014 Agriservices rate decision, and the approval of an approximate 14.9% rate increase, was premised on MVPHIC's confirmation that the filing would be Agriservices' last, and that Agriservices would notify its policyholders that their coverage would no longer be available at the expiration of the policy term. *See* Docket no. GMCB 19-14rr, Conclusions of Law ¶ 4 ("[W]e accept MVPHIC's confirmation that this is Agriservices' final rate filing"); ¶ 9 (filing approved "with the understanding that this is our last review…[and] Agriservices must notify its members that their plans will no longer be available once this coverage period has ended"). Nevertheless, the 2014 filing was plainly not Agriservices' last. There is no evidence in the record that Agriservices provided notice to its members that their plans could no longer be renewed, despite the clear statement in the 2014 decision that it must do so. The record suggests the contrary; MVPHIC, in response to a question from our actuaries, states that Agriservices experienced a 96.7% membership retention rate as of June 2015, prompting it to offer members the option to renew their plans in 2015. Because the insurer did not apply any of the 2014 rate increase towards the cost of notifying members that the plan would no longer be available, the base rate for this plan started out being unfair, unjust, and inequitable even before this year's increase is applied.

Moreover, by choosing to file this rate request very late in the year and then including an error that further delayed the process, MVPHIC put plan members in an unfair, unjust, and inequitable position. Plan members had to decide whether to continue their current insurance plans without knowing what the next year's rate increase would be. MVPHIC's shortened timeline therefore gave its members insufficient time to make an informed decision on whether or not to continue coverage, putting them at risk for financial hardship and, if they chose to cancel their current plans, gaps in coverage. Further, based on MVPHIC's late filing, Board approval of MVPHIC's high requested rate increase will result in an increase both to future premiums and will apply retroactively for additional premiums.

5. The Board additionally finds that MVPHIC's actions in this case fail to promote plan members' access to health care. MVPHIC's changing stance on the future of this plan, its delayed filing, the further delay caused by the error, the short notice it gave to policyholders about the possible cost increase, the potential for retroactive charges, and the fact that members were expected to decide whether or not to continue their coverage before they knew what their future premiums costs made it extremely difficult for plan members to prepare and budget for health insurance coverage. In creating coverage insecurity for policyholders, MVPHIC dissuaded members from pursuing necessary medical care.

6. Pursuant to 8 V.S.A. § 4062(a)(2) and 18 V.S.A. § 9375(b)(6), the Board has broad authority to approve, modify or disapprove a rate based on factors beyond mathematical or actuarial review. The above-described events, taken together, illustrate a lack of accountability to the Board as well as to the Agriservices membership, and lead us to conclude that the proposed rates are not affordable, do not promote access to quality health care and are unfair, unjust and inequitable to plan members. In addition, because this filing represents only a small portion of MVPHIC's overall business, our decision to deny the rate increase will have a nominal impact on the carrier's solvency. Considering the numerous issues with this filing that MVPHIC could have easily avoided, it would set a dangerous precedent to allow any rate increase in this case.

7. In conclusion, the Board declines to approve the filing and any requested rate increase.

Dated at Montpelier, Vermont this 18th day of October, 2016.

s/ *Kaili Kuiper*____________
Kaili Kuiper
Staff Attorney
Office of Health Care Advocate

CERTIFICATE OF SERVICE

I, Kaili Kuiper, hereby certify that I have served the above Memorandum on Judith Henkin, General Counsel to the Green Mountain Care Board; Noel Hudson, Health Policy Director of the Green Mountain Care Board; and Gary Karnedy, representative of MVP, by electronic mail, return receipt requested this 18th day of October, 2016.

s/ *Kaili Kuiper* ___________

Kaili Kuiper
Staff Attorney
Office of Health Care Advocate
P.O. Box 606
Montpelier, Vt. 05601
Voice (802) 223-6377 ext. 329